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16
17 UNITED STATES DISTRICT COURT
18 DISTRICT OF NEVADA

19 Lausteveion Johnson,
20 Plaintiff,
21 vs.
22 Northern Nevada Correctional Center, et
23 al.,
24 Defendants.

25 CASE NO. 2:15-cv-00884-JAD-NJK
26 **MOTION TO EXTEND DISCOVERY
27 DEADLINES
28 (SECOND AND FINAL REQUEST)**

29
30 Defendants, Isidro Baca, Renee Baker, Julio Calderin, James Cox, Brandon
31 Lawrence, Luis Lopez, Dwight Neven, Brian Williams, and Johnny Youngblood, by and
32 through counsel, Adam Paul Laxalt, Attorney General of the State of Nevada, and Frank
33 A. Toddre II, Deputy Attorney General, hereby move for a final extension of the
34 remaining discovery and scheduling deadlines for an additional seventy-five (75) days.
35 Defendants' motion is based on Federal Rule of Civil Procedure 7 and Local Rules 7-2 and
36 26-4, the following memorandum of points and authorities, the pleadings and papers on
37 file and the attached Declaration of Counsel.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND RELEVANT PROCEDURAL HISTORY

This is an inmate civil rights action brought pursuant to 42 U.S.C. § 1983. Plaintiff Lausteveion Delano Johnson (Plaintiff) is an inmate in the custody of the Nevada Department of Corrections (NDOC), currently housed at Southern Desert Correctional Center (SDCC). That the causes of action took place while incarcerated at Northern Nevada Correctional Center (NNCC), SDCC, Ely State Prison (ESP), and High Desert State Prison (HDSP). The Original Complaint alleged six discrete claims for Eighth Amendment Deliberate indifference to medical needs, First Amendment Religious exercise violations, First Amendment retaliation claims, First Amendment access to the Courts, and Fourteenth Amendment equal protection claims. (ECF No. 2). The initial Screening Order dismissed certain First and Eighth Amendment claims. (ECF No. 11).

The parties' Early Mediation Conference was initially set for May 27, 2016, but was vacated for global settlement negotiations. The parties conducted two global settlement conferences, the final conference occurring on July 22, 2016. No settlement was reached and Judge Foley found that all of Johnson's cases should be returned to the normal litigation track and lifted the associated global stay. (ECF No. 19).

An inmate early mediation conference was set for October 7, 2016. (ECF No. 21). A settlement was not reached. (ECF No. 24). The Court has entered its initial Scheduling Order regarding representation and responsive pleadings. (ECF No. 26).

Johnson filed a Motion for Appointment of Counsel on October 27, 2016. (ECF No. 28). Defendants opposed on November 9, 2016. (ECF No. 29). The Court denied the motion finding that Johnson had not demonstrated “exceptional circumstances” to support an appointment. (ECF No. 33).

Defendants filed an Answer on December 16, 2016. (ECF NO. 34). The Court issued its scheduling Order, with a discovery deadline of March 20, 2017. (ECF No. 36). Johnson has propounded discovery to all Defendants and it has been answered.

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1 Defendants propounded discovery upon Johnson on February 9, February 15, and
2 March 15, 2017. Johnson advised that he had lost the discovery requests. *See Ex. A*
3 "Declaration of Counsel". Parties agreed to a 60 day extension, Defendants filed said
4 request on March 16, 2017. (ECF No. 43). Johnson subsequently advised that he need a
5 new copy of all discovery. Ex. A.

6 Parties had an additional meet and conferred and agreed upon another extension
7 of time. Ex. A. On May 8, 2017, Defendants received Johnson's answered parts of the
8 discovery in undated correspondence. The discovery responses do not comply with FRCP
9 30 or 36 in form and Johnson has not responded to any of the Requests for Production.

10 In attempting contact with Johnson, it was discovered that Johnson has been
11 placed in Disciplinary Segregation for an unrelated matter.

12 With the additional discovery time, Defendants will seek to cure written discovery
13 defects through an oral deposition in an effort to conserve judicial resources and avoid
14 unnecessary motion practice over problems that are likely rooted in procedural
15 inefficiency and prison litigation logistical concerns rather than willful disregard of the
16 written discovery.

17 **II. APPLICABLE LEGAL STANDARD**

18 Local Rule 26-4 (revised May 1, 2016) provides as follows:

19 A motion or stipulation to extend any date set by the discovery plan,
20 scheduling order, or other order must, in addition to satisfying the
21 requirements of LR IA 6-1, be supported by a showing of good cause for the
22 extension. A motion or stipulation to extend a deadline set forth in a
23 discovery plan must be received by the court no later than 21 days before the
24 expiration of the subject deadline. A request made within 21 days of the
subject deadline must be supported by a showing of good cause. A request
made after the expiration of the subject deadline will not be granted unless
the movant also demonstrates that the failure to act was the result of
excusable neglect. A motion or stipulation to extend a discovery deadline or
to reopen discovery must include:

- 25 (a) A statement specifying the discovery completed;
- 26 (b) A specific description of the discovery that remains to be completed;
- 27 (c) The reasons why the deadline was not satisfied or the remaining
discovery was not completed within the time limits set by the discovery plan;
28 and,

1 (d) A proposed schedule for completing all remaining discovery.

2 **III. ARGUMENT**

3 Defendants submit that there is good cause and excusable neglect to extend the
4 remaining discovery and scheduling deadlines for an additional seventy-five (75) days.
5 Defendants have propounded significant discovery to Plaintiff which remains
6 substantially unanswered. Plaintiff answered parts of the discovery in an undated
7 correspondence, post marked on May 5, 2017, which Defendants received on May 8, 2017.
8 In reviewing the responses, it was discovered that responses do not comply with FRCP 30
9 or 36 in form and Plaintiff did not respond to any of the Requests for Production.

10 In attempting contact with Plaintiff to conduct a third meet and confer, it was
11 discovered that Plaintiff has been placed in Disciplinary Segregation for an unrelated
12 matter, and was not immediately available for the shortened timeframe required by
13 Counsel.

14 In an effort to conserve judicial resources and avoid unnecessary motion practice
15 over problems that are likely rooted in procedural inefficiency and prison litigation
16 logistical concerns rather than willful disregard of the written discovery, Defendants now
17 seek to take an oral deposition of Plaintiff. Defendants provide the following information
18 pursuant to Local Rule 26-4.

19 **A. Discovery Completed**

20 As of the filing of this motion, the following written discovery has been completed.
21 The time of receipt and time of response is provided.

22 Propounding Party	23 Answering Party	24 Written Discovery	25 Date of Service	26 Responsive Date
Johnson	Baca	ROG Set One	Jan. 13, 2017	Feb. 9, 2017
Johnson	Lopez	ROG Set One	Jan. 13, 2017	Feb. 9, 2017
Johnson	Lawrence	ROG Set One	Jan. 13, 2017	Feb. 14, 2017
Johnson	Youngblood	ROG Set One	Jan. 13, 2017	Feb. 9 2017
Johnson	Williams	ROG Set One	Jan. 13, 2017	Feb. 9, 2017
Johnson	Neven	ROG Set One	Jan. 13, 2017	Feb. 13, 2017
Johnson	Calderin	ROG Set One	Jan. 13, 2017	Feb. 9, 2017
Johnson	Baker	ROG Set One	Jan. 13, 2017	Feb. 14, 2017

1	Johnson	“Defendants”	RPD Set One	Jan. 13, 2017	Feb. 9, 2017
2	Baker	Johnson	RFA Set One	Feb. 3, 2017	Feb. 10, 2017
3	Williams	Johnson	RFA Set One	Feb. 3, 2017	Feb. 10, 2017
4	Cox	Johnson	RFA Set One	Feb. 3, 2017	Feb. 10, 2017
5	Neven	Johnson	RFA Set One	Feb. 3, 2017	Feb. 10, 2017
6	Baca	Johnson	RFA Set One	Feb. 3, 2017	Feb. 10, 2017
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8	Baker	Johnson	ROG Set One	Feb. 9, 2017	Feb. 14, 2017
9	Calderin	Johnson	ROG Set One	Feb. 9, 2017	Feb. 14, 2017
10	Youngblood	Johnson	ROG Set One	Feb. 9, 2017	Feb. 14, 2017
11	Baker	Johnson	RFA Set Two	Feb. 9, 2017	Feb. 14, 2017
12	Calderin	Johnson	RFA Set One	Feb. 9, 2017	Feb. 14, 2017
13	Youngblood	Johnson	RFA Set One	Feb. 9, 2017	Feb. 14, 2017

B. Discovery That Remains to be Completed

The following discovery has been propounded but not yet satisfactorily answered:

Propounding Party	Answering Party	Written Discovery	Date of Service	Substantially Unresponsive Date
14 Baker	Johnson	RPD Set One	Feb. 9, 2017	n/a
15 Calderin	Johnson	RPD Set One	Feb. 9, 2017	n/a
16 Youngblood	Johnson	RPD Set One	Feb. 9, 2017	n/a
17 Cox	Johnson	RPD Set One	Feb. 15, 2017	n/a
18 Cox	Johnson	ROG Set One	Feb. 15, 2017	May 5, 2017
19 Williams	Johnson	RPD Set One	Feb. 15, 2017	n/a
20 Williams	Johnson	ROG Set One	Feb. 15, 2017	May 5, 2017
21 Baca	Johnson	RPD Set One	Feb. 15, 2017	n/a
22 Baca	Johnson	ROG Set One	Feb. 15, 2017	May 5, 2017
23 Neven	Johnson	RPD Set One	Feb. 15, 2017	n/a
24 Neven	Johnson	ROG Set One	Feb. 15, 2017	May 5, 2017
25 Lawrence	Johnson	RPD Set One	Feb. 15, 2017	n/a
26 Lawrence	Johnson	ROG Set One	Feb. 15, 2017	May 5, 2017
27 Lawrence	Johnson	RFA Set One	Feb. 15, 2017	May 5, 2017
28 Baker	Johnson	ROG Set Two	Feb. 17, 2017	May 5, 2017
Baker	Johnson	RPD Set Two	Feb. 17, 2017	n/a
Baker	Johnson	RFA Set Three	Feb. 17, 2017	May 5, 2017
Lopez	Johnson	ROG Set One	Feb. 17, 2017	May 5, 2017
Lopez	Johnson	RPD Set One	Feb. 17, 2017	n/a
Lopez	Johnson	RFA Set One	Feb. 17, 2017	May 5, 2017
Neven	Johnson	ROG Set 2	March 14, 2017	May 5, 2017

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C. Reasons why the Deadlines Were not Satisfied

During the first meet and confer, Plaintiff expressed confusion on how and why to respond to discovery requests. Plaintiff also initially requested a one year extension of discovery. Parties instead agreed upon a 60 day extension, and that if the 60 day was not sufficient it would likely be amenable to further requests so long as Mr. Johnson did provide sufficient notice for this office to draft a motion and conduct meet and confers under the local rules.

During the second meet and confer, Plaintiff stated that he needed all the unanswered discovery to be resent. Parties also agreed to an additional extension. This motion contemplates this agreed upon extension request. Prior to Defendants requesting said extension, Plaintiff answered parts of the discovery. The deadline to file discovery motions is currently June 2, 2017.

Plaintiff was unavailable for a third meet and confer to discuss deposition due to disciplinary issues and Counsel only had a limited window to discuss the same. Rather than file a motion to compel, Defendants, optimistically, believe that recent discovery problems are likely rooted in procedural inefficiency and prison litigation logistical concerns rather than willful disregard of the written discovery. Accordingly, Defendants now seek to take an oral deposition of Plaintiff.

D. Proposed Schedule for Remaining Scheduling Deadlines

Defendants propose the following remaining discovery and scheduling deadlines which are based upon a request for a seventy-five day extension.

August 2, 2017 Close of Discovery.

August 16, 2017 Discovery Motion Deadline.

August 19, 2017 Dispositive Motion Deadline.

September 19, 2017 Joint Pretrial Order due (suspended until 30 days after the Court resolves dispositive motions).

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IV. CONCLUSION

There is good cause and excusable neglect to extend the remaining discovery and scheduling deadlines, and accordingly Defendants' motion should be granted.

DATED this 25th day of May, 2017.

Respectfully submitted,

ADAM PAUL LAXALT
Attorney General

By: /s/ Frank A. Toddre II
Frank A. Toddre II (Bar. No. 11474)
Deputy Attorney General

Attorneys for Defendants Isidro Baca,
Renee Baker, Julio Calderin, James Cox,
Brandon Lawrence, Luis Lopez, Dwight Neven,
Brian Williams and Johnny Youngblood

IT IS SO ORDERED.

Dated: May 26, 2017.

UNITED STATES MAGISTRATE JUDGE